

IN THE
Supreme Court of the United States
OCTOBER TERM, 1979

Supreme Court, U. S.
FILED

DEC 20 1979

RODAK, JR., CLERK

No. 79-192

NEW YORK GASLIGHT CLUB, INC. and JOHN
ANDERSON, Manager of the NEW YORK GAS-
LIGHT CLUB, INC.,

Petitioners,

v.

MS. CIDNI CAREY,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SECOND CIRCUIT

**BRIEF OF THE PUERTO RICAN LEGAL DEFENSE &
EDUCATION FUND, INC. AS *AMICUS CURIAE***

CHARLES C. PARLIN, JR.
LEONARD GROSS
SHEARMAN & STERLING
53 Wall Street
New York, New York 10005
(212) 483-1000

M. D. TARACIDO
PETER BIENSTOCK
PUERTO RICAN LEGAL DEFENSE &
EDUCATION FUND, INC.
95 Madison Avenue, Suite 1304
New York, New York 10016
(212) 532-8470

TABLE OF CONTENTS

	PAGE
Interest of <i>Amicus Curiae</i>	1
<p>ARGUMENT—Section 706 of Title VII of the Civil Rights Act of 1964 authorizes the award of attorney's fees for the successful prosecution of employment discrimination cases in state administrative proceedings pursuant to a deferral by the EEOC</p>	
I. Title VII's Attorney's Fees Provision Should Be Liberally Construed	3
II. Proceedings in State Agencies Which Follow Deferral By The EEOC Are Within The Scope Of Cases In Which Title VII Provides For An Award Of Attorney's Fees	5
III. Title VII Remedies, Including The Provision For Attorney's Fees, Are Designed To Supplement State Administrative Remedies	7
IV. The Practical Salutary Consequences Of The Decision Below Dictate Its Affirmance	8
V. This Is An Appropriate Case For An Award Of Attorney's Fees	9
Conclusion	12

TABLE OF AUTHORITIES

Cases:

<i>Alexander v. Gardner-Denver Co.</i> , 415 U.S. 36, 94 S.Ct. 1011, 39 L. Ed. 2d 147 (1974)	7
--	---

	PAGE
<i>Al-Hamdani v. State University of New York</i> , 438 F. Supp. 299 (W.D.N.Y. 1977)	7
<i>Christiansburg Garment Co. v. EEOC</i> , 434 U.S. 412, 98 S.Ct. 694, 54 L. Ed. 2d 648 (1978)	10
<i>Fairley v. Patterson</i> , 493 F.2d 598 (5th Cir. 1974) ..	11
<i>Fischer v. Adams</i> , 572 F.2d 406 (1st Cir. 1978)	5
<i>Foster v. Boorstein</i> , 182 U.S. App. D.C. 342, 561 F.2d 340 (D.C. Cir. 1977)	5
<i>Guzman v. Califano</i> , S.D.N.Y., 79 Civ. 0606 (ADS) (November 16, 1979), slip op. at 1	9
<i>Incarcerated Men of Allen County Jail v. Fair</i> , 507 F.2d 281 (6th Cir. 1974)	11
<i>Johnson v. Georgia Highway Express, Inc.</i> , 488 F.2d 714 (5th Cir. 1974)	4
<i>Johnson v. United States</i> , D. Md. Civil Action No. H-74-1343 (June 8, 1976), slip op. at 7, 12 Empl. Prac. Dec. (CCH) ¶ 11,039, at 4841, <i>affirmed</i> , 554 F.2d 632 (4th Cir. 1977)	5
<i>Lea v. Cone Mills Corporation</i> , 438 F.2d 86 (4th Cir. 1971)	4, 10
<i>Love v. Pullman Co.</i> , 404 U.S. 522, 92 S.Ct. 616, 30 L. Ed. 2d 679 (1972)	6
<i>Mahroom v. Hook</i> , 563 F.2d 1369 (9th Cir. 1977)	4
<i>McMullen v. Warner</i> , 416 F. Supp. 1163 (D.D.C. 1976)	4, 5
<i>Newman v. Piggie Park Enterprises, Inc.</i> , 390 U.S. 400, 88 S.Ct. 964, 19 L.Ed. 2d 1263 (1968)	4, 10

	PAGE
<i>Noble v. Claytor</i> , 448 F. Supp. 1242 (D.D.C. 1978) ...	5
<i>Oscar Meyer & Co. v. Evans</i> , — U.S. —, 99 S.Ct. 2066, 60 L. Ed. 2d 609 (1979)	6
<i>Parker v. Califano</i> , 182 U.S. App. D.C. 322, 561 F.2d 320 (D.C. Cir. 1977)	4, 5
<i>Reynolds v. Coomey</i> , 567 F.2d 1166 (1st Cir. 1978) ..	10, 11
<i>Rockbridge v. Lincoln</i> , 449 F.2d 567 (9th Cir. 1971) ..	5
<i>Rodriguez v. Taylor</i> , 569 F.2d 1231 (3d Cir. 1971), <i>cert. denied</i> , 436 U.S. 913, 98 S.Ct. 2254, 56 L. Ed. 2d 414 (1978)	10, 11
<i>Smith v. Califano</i> , 446 F. Supp. 530 (D.D.C. 1978) ...	5, 8
<i>Torres v. Sachs</i> , 69 F.R.D. 343 (S.D.N.Y. 1975), <i>aff'd</i> , 538 F.2d 10 (2d Cir. 1976)	11
<i>Voutsis v. Union Carbide Corporation</i> , 452 F.2d 889 (2nd Cir. 1971), <i>cert. denied</i> , 406 U.S. 918, 92 S.Ct. 1768, 32 L. Ed. 2d 117 (1972)	6, 7
<i>Weise v. Syracuse University</i> , 522 F.2d 397 (2nd Cir. 1975)	6
Other Authorities:	
Hearings Before the Subcomm. on Representation of Citizen Interests of the Senate Comm. on the Judiciary, 93rd Cong., 1st Sess., Parts 3 and 4 (1973)	11
House of Representatives Report on The Civil Rights Attorney's Fees Awards Act of 1976, H.R. Rep. No. 94-1558, 94th Cong., 2d Sess. 8, n.16 (1976) ..	11
Legislative History of Attorney's Fees Awards, Act of 1976, 5 U.S. Code Cong. & Admin. News 5909-13 (1976)	11

	PAGE
Nussbaum, Attorney's Fees in Public Interest Litigation, 48 N.Y.U. Law Review 301 (1973)	3
Vaas, Title VII: Legislative History, 7 Boston College Industrial and Commercial Law Review 431 (1966)	10
 Statutes:	
Title VII of the Civil Rights Act of 1964:	
42 U.S.C. § 2000e <i>et seq.</i>	3
42 U.S.C. § 2000e-5(b)	9
42 U.S.C. § 2000e-5(c)	2, 6
42 U.S.C. §§ 2000e-5(c)-(f)	6
42 U.S.C. § 2000e-5(k)	2, 3, 4, 5, 7
42 U.S.C. § 1988	11
Section 297(4)(a) of the Executive Law of the State of New York	8

IN THE
Supreme Court of the United States
OCTOBER TERM, 1979

No. 79-192

NEW YORK GASLIGHT CLUB, INC. and JOHN ANDERSON,
 Manager of the New York Gaslight Club, Inc.
Petitioners,

v.

Ms. CIDNI CAREY,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
 APPEALS FOR THE SECOND CIRCUIT

**BRIEF OF THE PUERTO RICAN LEGAL DEFENSE &
 EDUCATION FUND, INC. AS *AMICUS CURIAE***

Interest of *Amicus Curiae**

This brief is submitted on behalf of the Puerto Rican Legal Defense & Education Fund, Inc., as *Amicus Curiae*, urging affirmance of the decision of the Second Circuit Court of Appeals. Applying a thorough and astute analysis, that Court held that an aggrieved plaintiff is entitled to recover attorney's fees in federal court under

* Letters of the Petitioners and Respondent giving their consent to file this brief have been filed with the Clerk of this Court.

Section 706(k) of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-5(k), for the successful prosecution of an employment discrimination complaint in a state administrative proceeding pursuant to a deferral by the Equal Employment Opportunity Commission ("EEOC") under 42 U.S.C. § 2000e-5(c).

The Puerto Rican Legal Defense & Education Fund, Inc. ("Fund") is a non-profit, tax-exempt public interest organization, dedicated to protecting and advancing the civil and constitutional rights of Puerto Rican and other Hispanic-Americans through litigation and other legal processes.

The Fund has a significant interest in the outcome of this case. Many Puerto Rican and other Hispanic-Americans who suffer employment discrimination seek assistance from the Fund. To the extent its limited resources allow, the Fund has represented, and expects to continue to represent these parties. On occasion, the Fund has received an award of attorney's fees from the courts. Reversal of the decision below will deny the Fund, and all similar organizations, an important source of revenue to pursue these cases. (This revenue is particularly important at a time when economic constraints may cause some groups to contribute less to the Fund than they have in the past.) Indeed, reversal here may ultimately result in less vigorous enforcement of fair employment laws generally.

For example, the Fund presently represents at least two complainants pursuing employment discrimination claims before state administrative tribunals, in cases which are procedurally identical to this case. If successful on the merits, these complainants, applying the legal principle enunciated by the Second Circuit in this case, will have the opportunity to recover full relief by moving for attorney's fees in federal court. If this decision is not affirmed, these complainants, and thousands more, will be

denied full relief; and that consequence will dissuade lawyers from taking such cases in the future.

Moreover, affirmance here would induce more private law firms to represent individuals who are the victims of employment discrimination. Representation of employment discrimination victims by the private bar would not only assist in the struggle against discrimination in employment, but would also have the salubrious effect of exposing a larger segment of the bar to this extremely important area of public interest litigation. *See Nussbaum, Attorney's Fees in Public Interest Litigation*, 48 N.Y.U. Law Review 301, 305-11 (1973).

ARGUMENT

Section 706 of Title VII of the Civil Rights Act of 1964 authorizes the award of attorney's fees for the successful prosecution of employment discrimination cases in state administrative proceedings pursuant to a deferral by the EEOC.

I. Title VII's Attorney's Fees Provision Should Be Liberally Construed

Title VII of the Civil Rights Act of 1964 prohibits discrimination in employment on the basis of "race, color, religion, sex or national origin." 42 U.S.C. § 2000e *et seq.* Section 706(k) of Title VII, 42 U.S.C. § 2000e-5(k), provides for a court to award reasonable attorney's fees to a prevailing party "[i]n any action or proceeding under this subchapter."

Congress' purpose in enacting this section providing for the award of attorney's fees was to encourage victims of employment discrimination to bring legal proceedings to vindicate their rights. By removing the burden of requiring them to pay their own legal fees, Congress reasoned, victims of employment discrimination will be more likely to

seek legal redress. *Parker v. Califano*, 561 F.2d 320, 328 (D.C. Cir. 1977); *McMullen v. Warner*, 416 F. Supp. 1163, 1167 (D.D.C. 1976); *Cf. Lea v. Cone Mills Corporation*, 438 F.2d 86, 88 (4th Cir. 1971); *See also Newman v. Piggie Park Enterprises, Inc.*, 390 U.S. 400, 88 S. Ct. 964, 19 L. Ed. 2d 1263 (1968). Thus, in *Piggie Park*, this Court in construing Title II's attorney fee provision (which is similar to, but narrower than that in Title VII) stated that:

"When the Civil Rights Act of 1964 was passed, it was evident that enforcement would prove difficult and that the Nation would have to rely in part upon private litigation as a means of spurring broad compliance with the law. . . ."

"Congress . . . enacted the provision for counsel fees—not simply to penalize litigants who deliberately advance arguments they know to be untenable but, more broadly, to encourage individuals injured by racial discrimination to seek judicial relief under Title II." 390 U.S. 400, 401, 402, 88 S.Ct. 964, 966, 19 L. Ed. 2d 1263, 1265-1266 (1968) (footnotes omitted).

In construing the attorneys' fees provision of Title VII, the Fifth Circuit in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974), also favored a broad interpretation:

"This Court, as part of its obligation 'to make sure that Title VII works,' has liberally applied the attorney's fees provision of Title VII, recognizing the importance of private enforcement of civil rights legislation." *Id.* at 716 (footnote omitted).

Thus, Section 706(k) should be liberally construed to achieve its remedial purpose. *Mahroom v. Hook*, 563 F.2d 1369, 1375 (9th Cir. 1977), and cases cited.

II. Proceedings In State Agencies Which Follow Deferral By The EEOC Are Within The Scope Of Cases In Which Title VII Provides For An Award Of Attorney's Fees

Section 706(k) provides in pertinent part that:

"In any action or proceeding under this subchapter the court, in its discretion, may allow the prevailing party . . . a reasonable attorney's fee as part of the costs. . . ."

The language of the statute, expressly providing for recovery of attorney's fees in any "action or proceeding," demonstrates that Congress did not intend to restrict the recovery of attorney's fees to actions instituted in court but intended to include *proceedings* brought before administrative tribunals as well. *Johnson v. United States*, D. Md. Civil Action No. H-74-1343 (June 8, 1976), slip op. at 7, 12 Empl. Prac. Dec. (CCH) ¶11,039, at 4841, *affirmed*, 554 F.2d 632 (4th Cir. 1977). Such a reading of the statute comports with the principle of statutory construction requiring that statutes be interpreted to avoid redundancy. *Rockbridge v. Lincoln*, 449 F.2d 567, 571 (9th Cir. 1971). If Congress did not intend to include the award of attorney's fees in administrative proceedings, there would have been no need to include the language "or proceeding." *Parker v. Califano*, 561 F.2d at 325.*

The question remains, however, as to whether an action or proceeding "under this subchapter" includes a proceed-

* Cases in which courts have permitted the award of attorney's fees in Title VII administrative proceedings include *Fischer v. Adams*, 572 F.2d 406 (1st Cir. 1978); *Foster v. Boorstin*, 182 U.S. App. D.C. 342, 561 F.2d 340 (1977); *Parker v. Califano*, 182 U.S. App. D.C. 322, 561 F.2d 320 (1977); *Johnson v. United States*, 554 F.2d 632 (4th Cir. 1977); *Noble v. Claytor*, 448 F. Supp. 1242 (D.D.C. 1978); *Smith v. Califano*, 446 F. Supp. 530 (D.D.C. 1978); and *McMullen v. Warner*, 416 F. Supp. 1163 (D.D.C. 1976).

ing instituted before a state administrative tribunal after referral by the EEOC. An examination of 42 U.S.C. §§ 2000e-5(c)-(f) compels an affirmative answer.

In New York, the EEOC must defer all complaints initially to the New York State Division of Human Rights ("State Division") as mandated by 42 U.S.C. § 2000e-5(c). *Oscar Meyer & Co. v. Evans*, — U.S. —, 99 S.Ct. 2066, 2071 & n.3, 60 L. Ed. 2d 609, 615 & n.3 (1979). In accordance with the policy of enforcement enumerated in Title VII, the EEOC holds that complaint "in suspended animation" while the State Division is given an opportunity to consider the complaint. *Love v. Pullman Co.*, 404 U.S. 522, 526, 92 S.Ct. 616, 618, 30 L. Ed. 2d 679, 684 (1972). At the end of the sixty days after deferral to the State Division (unless the proceeding has terminated earlier) or subsequently, *e.g.*, at the conclusion of the state proceedings, the EEOC commences action on the matter. Thereafter, the EEOC:

"investigates; if it finds no reasonable cause to believe the charge is true, it dismisses the charge, but if it finds reasonable cause it attempts conciliation. 42 U.S.C. Section 2000e-5(b). If conciliation fails, the Commission can institute a civil action against the respondent. 42 U.S.C. Section 2000e-(5)(f) (1). If the EEOC dismisses the charge, or if after 180 days after filing the Commission has neither effected conciliation nor instituted a civil action, it is to notify the aggrieved party, who has 90 days after the giving of such notice to commence an individual civil action." *Weise v. Syracuse University*, 522 F.2d 397, 411-412 (2nd Cir. 1975).

In sum, deferral to the State Division is an integral part of the enforcement process under Title VII, 42 U.S.C. § 2000e-5(c). See *Alexander v. Gardner-Denver Co.*, 415 U.S. 36, 44, 94 S.Ct. 1011, 1017, 39 L. Ed. 2d 147, 155-156

(1974); *Voutsis v. Union Carbide Corporation*, 452 F.2d 889, 892 (2nd Cir. 1971), *cert. denied*, 406 U.S. 918, 92 S.Ct. 1768, 32 L. Ed. 2d 117 (1972). Thus, because the term "under this subchapter" includes deferral to the State agency, there can be no question that Section 706(k) provides for attorney's fees for proceedings deferred to the State agency by the EEOC.

III. Title VII Remedies, Including The Provision For Attorney's Fees, Are Designed To Supplement State Administrative Remedies

It is absolutely clear that Congress provided for the full panoply of remedies under Title VII to augment state administrative remedies which proved inadequate. Thus, in *Alexander v. Gardner-Denver Co.*, 415 U.S. 36, 48-49, 94 S.Ct. 1011, 1020, 39 L. Ed. 2d 147, 158 (1974), this Court stated that "[t]he clear inference is that Title VII was designed to supplement, rather than supplant, existing laws and institutions relating to employment discrimination." Similarly, in *Voutsis v. Union Carbide Corporation*, 452 F.2d 889, 893 (2nd Cir. 1971), *cert. denied*, 406 U.S. 918, 92 S.Ct. 1768, 32 L. Ed. 2d 117 (1972), the Second Circuit explained the unique status of Title VII claims:

"The Congressional policy here sought to be enforced is one of eliminating employment discrimination, and the statutory enforcement scheme contemplates a resort to the federal remedy if the state machinery has proved inadequate. The federal remedy is independent and cumulative . . . and it facilitates comprehensive relief."

Accord, Al-Hamdani v. State University of New York, 438 F. Supp. 299, 302 (W.D.N.Y. 1977).

Since the State Division did not afford the respondent full relief under Title VII, she certainly was entitled to secure that relief in federal court.

IV. The Practical Salutary Consequences Of The Decision Below Dictate Its Affirmance

First, Petitioner's arguments to the contrary notwithstanding, an award of attorney's fees to Respondent will not impinge on the inherent power of the states or conflict with New York State's statutory scheme, Section 297 (4) (a) of the Executive Law of the State of New York. Quite the contrary, affirmance of the decision below will facilitate the use of state proceedings because an individual will be compensated for the expense incurred at the state level. Denial of attorney's fees to parties such as Respondent would only serve to reduce or eliminate attempts to resolve cases at the state level and increase litigation in the federal courts. Rather than attempt to resolve anything at the state level, an aggrieved party would be more likely to abandon the administrative proceeding and institute his action in federal court at the earliest possible moment. As stated in *Smith v. Califano*, 446 F. Supp. 530, 534 (D.D.C. 1978):

"a party who knew he could recover all fees once he got to court but would recover none if he prevailed at the administrative level would rush to court . . . rather than wait for a final agency decision. . . . Thus, the administrative proceeding [required by Title VII] might be relegated to a pro forma exhaustion step decreasing the likelihood that claims could be resolved without resorting to the courts."

Further, in the situation posited by the court in *Smith*, the federal court would have to decide the merits of complainant's claims on an incomplete or absent administrative record, occasioning further loss of time and money for everyone.

Second, energetic work by motivated counsel at the state administrative level plays a very significant role in determining whether a victim of employment discrimination is

ultimately successful. The state courts usually give great deference to the factual findings of the administrative tribunal.* The absence of an attorney for the complainant at this level may result in adverse findings. Cf. *Guzman v. Califano*, S.D.N.Y., 79 Civ. 0606 (ADS) (November 16, 1979), slip op. at 1 ("the legal profession has come to recognize that administrative law cases, particularly for social benefits, are usually won or lost in the agency process.")

As explained by the Court of Appeals below (Appendix at 11), under the New York statute, attorneys for the State Division represent the "case in support of the complaint" (emphasis supplied) not the complainant. They may or may not at all times represent the interests of the complainant. Depending upon case load, the State Division attorney may or may not be able to devote the time necessary to adequately represent all of the complainant's interests. To the extent that impossibility of recovering reasonable attorney's fees dissuades other lawyers from handling these types of cases, or makes it more difficult for them to do so, complainants—and the public interest in ending employment discrimination—suffer.

V. This Is An Appropriate Case For An Award Of Attorney's Fees

Petitioner argues that the District Court's decision (Appendix at 24) was purely discretionary, and that the Court of Appeals could only reverse that decision based on a finding of abuse of discretion. This argument misses the point.

* Similarly, the EEOC, in determining whether there is reasonable cause to believe the charge is true and whether they should pursue enforcement of the matter or dismiss the charge, are required to "accord substantial weight to final findings and orders made by State or local authorities in proceedings commenced under State or local law." 42 U.S.C. § 2000e-5(b).

Notwithstanding that the award of attorney's fees is discretionary, it is not subject to unbridled discretion. On the contrary, as this Court stated in *Christiansburg Garment Co. v. EEOC*, 434 U.S. 412, 416-17, 98 S.Ct. 694, 698, 54 L. Ed. 2d 648, 653-654 (1978), citing *Newman v. Piggie Park Enterprises*, 390 U.S. 400, 402, 88 S.Ct. 964, 966, 19 L. Ed. 2d 1263 (1968), a prevailing plaintiff under Title VII, just as a prevailing plaintiff under Title II, *Park Enterprises*, 390 U.S. 400, 402, 88 S.Ct. 19 L. Ed. 2d 1263 (1968), a prevailing plaintiff under Title VII, just as a prevailing plaintiff under Title II,

"should ordinarily recover an attorney's fee unless special circumstances would render such an award unjust."

There are no special circumstances in this case which would render such an award unjust. Petitioner's contention that a public interest law firm is somehow less deserving of attorney's fees than a private law firm is particularly fallacious. The statute makes no provision for different treatment of public interest and private firms, and the cases hold that such different treatment is not proper. *Reynolds v. Coomey*, 567 F.2d 1166, 1167 (1st Cir. 1978); *Rodriguez v. Taylor*, 569 F.2d 1231, 1245 (3d Cir. 1977), cert. denied, 436 U.S. 913, 98 S.Ct. 2254, 56 L. Ed. 2d 414 (1978); *Lea v. Cone Mills Corporation*, 438 F.2d 86 (4th Cir. 1971). See Vaas, Title VII: Legislative History, 7 Boston College Industrial and Commercial Law Review 431, 502 (1966). As stated by the First Circuit in *Reynolds*:

"Attorney's fees are, of course, to be awarded to attorneys employed by a public interest firm on the same basis as to a private practitioner."

567 F.2d at 1167.* In *Rodriguez*, the Third Circuit, permitting the award of attorney's fees to Community Legal Services, Inc., a non-profit Pennsylvania corporation, stated:

"Legal services organizations often must ration their limited financial and manpower resources. Allowing them to recover fees enhances their capabilities to assist in the enforcement of congressionally favored individual rights. See *Hairston v. R&R Apartments*, 510 F.2d 1090, 1092-93 (7th Cir. 1975); *Palmer v. Columbia Gas of Ohio, Inc.*, 375 F. Supp. 634, 636 (N.D. Ohio 1974); *Jones v. Seldon's Furniture Warehouse, Inc.*, 357 F. Supp. 886, 887-88 (E.D. Va. 1973); Note, Awards of Attorney's Fees to Legal Aid Offices, 87 Harv. L.Rev. 411, 413-14 (1973). Moreover, assessing fees against defendants in all circumstances may deter wrongdoing in the first place. See *Jones v. Seldon's Furniture Warehouse, Inc.*, *supra*."**

569 F.2d at 1245.

* See generally, Legislative History of Attorney's Fees Awards Act of 1976, 5 U.S. Code Cong. & Admin. News 5909-13 (1976). (The Attorney's Fees Award Act of 1976, 42 U.S.C. § 1988, is governed by the same standards in the award of attorney's fees as the attorney's fee provision of the 1964 Civil Rights Act. *Id.* at 5912.)

** See also House of Representatives Report on The Civil Rights Attorney's Fees Awards Act of 1976, H.R. REP No. 94-1558, 94th Cong., 2d Sess. 8, n.16 (1976) which states that a prevailing party is entitled to attorney's fees even if represented by an organization, citing with approval *Incarcerated Men of Allen County Jail v. Fair*, 507 F.2d 281 (6th Cir. 1974) (award of legal fees to private non-profit legal services organization, partially supported by public funds, permitted); *Torres v. Sachs*, 69 F.R.D. 343 (S.D.N.Y. 1975), *aff'd*, 538 F.2d 10 (2d Cir. 1976) (award of legal fees to the Fund permitted); and *Fairley v. Patterson*, 493 F.2d 598 (5th Cir. 1974) (held that award of attorney's fees and expenses could not be reduced because appellant's attorney was employed or funded by a civil rights organization and/or a tax exempt foundation. *Id.* at 606). See generally, Hearings Before the Subcom. on Representation of Citizen Interests of the Senate Comm. on the Judiciary, 93rd Cong., 1st Sess., Parts 3 and 4 (1973).

CONCLUSION

For the foregoing reasons, the decision of the Court of Appeals should be affirmed.

Dated: New York, New York
December 20, 1979

CHARLES C. PARLIN, JR.
LEONARD GROSS
SHEARMAN & STERLING
53 Wall Street
New York, New York 10005
(212) 483-1000

M. D. TARACIDO
PETER BIENSTOCK
PUERTO RICAN LEGAL DEFENSE &
EDUCATION FUND, INC.
95 Madison Avenue, Suite 1304
New York, New York 10016
(212) 532-8470

Attorneys for Amicus Curiae